

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 381 of 1993

in

SPECIAL CIVIL APPLICATION No 2644 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
1 & 2 YES; 3 to 5 NO
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R K JHALA

Versus

STATE OF GUJARAT

Appearance:

MR IS SUPEHIA for Appellant No. 1
MR RC KODEKAR AGP for Respondent No. 1
..... for Respondents No. 2-6

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 10/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

1. The gist and genesis of the litigative journey to the stage of Letters Patent Appeal under Clause 15 of the

Letters Patent is the appointment of respondent No.3, out of the select list for the post of Assistant Regional Transport Officer, by the respondent Nos.1 and 2 authority by virtue of a notification dated 27.5.1980, on probation for a period of two years with effect from the date of his taking over the charge, issued by the Home Department of the State of Gujarat, and whereby also, the respondent No.3 was posted in the office of the Regional Transport Officer, Ahmedabad. Therefore, the main challenge is against the aforesaid notification, whereby, the respondent No.3 Mr.Makwana came to be appointed.

2. The appellant-original petitioner has questioned the legality and validity of the said appointment order on various grounds. He, inter alia, contended that he was selected by the Gujarat Public Service Commission (GPSC) for the post of Assistant Regional Transport Officer (ARTO) in August 1978. The select list was to be valid for a period of two years, and as such it was to expire on 27.8.1980 as per the Government Circular dated 4.4.1979. The appellant-original petitioner has pleaded that he was selected along with two other candidates who were given appointments to the post of ARTO before the expiry of the said select list. According to the contention of the appellant, the respondent No.3 Mr. Makwana, who was previously selected by the GPSC as a candidate for the post of ARTO, was appointed by the impugned order despite the fact that the select list had expired in May 1978.

3. The contentions and averments made in the petition came to be traversed and controverted by the respondents. A joint stand was taken by them that the impugned appointment of respondent No.3 was in accordance with the rules and service regulations out of the select list prepared by the GPSC which, at the relevant point of time, was operating. The learned single Judge, after having taken into consideration the facts and circumstances, the rival submissions and the proposition of law, reached the conclusion that the challenge against the impugned appointment order was meritless. Therefore, the petition came to be dismissed. Hence, this Letters Patent Appeal at the instance of the original petitioner by invoking Clause 15 of the Letters patent.

4. The learned advocate Mr.Supehia while appearing for the appellant-original petitioner raised the contention emphatically that the view taken by the learned single Judge was not supportable as the name of the original petitioner was already included in the wait list and all persons above him came to be appointed and

when his turn came, because of mala fides, the respondent No.3 came to be appointed out of the select list prepared for the said post after its expiry. Of course, he has not been able to highlight by supporting material from the record in so far as the plea of mala fides is concerned. Nothing has been successfully shown from the record which would even remotely indicate that the view taken by the learned single Judge in not accepting the plea of mala fides was unreasonable or unjust requiring further examination, appreciation or reconsideration. Probably, this may be one of the reasons why the issue of mala fides was not wholeheartedly advanced before us.

5. Therefore, the only question which would crop up for reconsideration and adjudication is as to whether the order of the respondent No.1 authority of appointing the respondent No.3 by virtue of the impugned notification can be assailed by the original petitioner-appellant before us in the L.P.A. One thing which was not disputed at the time of hearing by the learned counsel appearing for the appellant, and we may first place it on record, was that the person whose name is included in the wait list for the purpose of appointment does not acquire any legal right for being appointed. This proposition of law is extensively accepted and very well espoused in a catena of judicial pronouncements, and it need not detain us from proceeding further. It appears that for the post of ARTO, the GPSC had prepared a select list and also a wait list. There is no dispute that the name of respondent No.3 Mr.Makwana was included in the select list, whereas the name of the original petitioner was included in the wait list. Mere inclusion of name in the wait list, or for that purpose even in the select list, does not ipso facto constitute a legal right for being appointed on the post in question. The name of the original petitioner was in the wait list. The contention that the appointment of respondent No.3 Mr.Makwana came to be made out of the select list on the post of ARTO after its expiry would lead us to reach a logical and rational conclusion that the wait list would also not survive. The select list was prepared for the same post. Wait list is also prepared to meet with certain exigencies, like non-appointment of or non-acceptance of the appointments by the persons who are already included in the select list. The plea raised on behalf of the original petitioner that the appointment made by the respondent for the post of ARTO out of the expired select list is invalid cannot be entertained as his name was also included in the wait list.

6. Again, it was fairly stated before us that the

select list, out of which the respondent No.3 came to be appointed by virtue of the notification in question, was not a dead list or expired list as, by virtue of the order of this Court in a writ petition filed by the respondent No.3, it was subsisting or operating. Therefore, on both the counts, the main contention advanced before us fails. In our opinion, therefore, after having scanned and examined the contentions raised before us in this L.P.A., we find no merits and substance in this appeal. Since no other points and contentions are advanced before us, we find that it would not be expedient for this Court to go into further probe. Therefore, the contentions which came to be advanced before us being meritless, the L.P.A. questioning the legality and validity of the judgment and order of the learned single Judge deserves to be dismissed leaving the parties to bear the costs.

7. In the result, the appeal is dismissed. Interim relief, if any, shall stand vacated.

Sd/-

(J.N.Bhatt, J.)

Sd/-

10.1.2002 (D.H.Waghela, J.)
(KMG Thilake)